

AUG 08 2011**S/N 10/591,310****PATENT****BEFORE THE U.S. PATENT AND TRADEMARK OFFICE BOARD
OF PATENT APPEALS AND INTERFERENCES****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Terry O'Halloran, et al.	Examiner:	CHAN, Allen
Serial No.	10/591,310	Group Art Unit:	3714
Filed:	MAY, 7, 2007	Docket No.	PA1645.ap.US
Customer No.:	75035	Confirmation No.:	9252
Title:	LINEAR SCATTER JACKPOT METHOD AND SYSTEM		

MAIL STOP: APPEAL BRIEF - PATENTS
P.O. BOX 1450
Commissioner for Patents
Alexandria, VA22313-1450

Sir:

The U.S. Patent and Trademark Office is hereby authorized to debit any costs and fees associated with this Petition to Deposit Account No. 50-1391. Appellant(s) is submitting this single copy of the Appeal Brief in Compliance with the requirements of 37 CFR 41.37(c). Appellant requests a personal appearance at the Board of Appeals, but will defer payment of the fee until after receipt of the Examiner's Answer.
Electronically transmitted in accordance with § 1.6(a)(4)

I hereby certify that this paper is being transmitted by facsimile to the United States Patent and Trademark Office on the date shown below, ADDRESSED TO mail stop: appeal brief – patents..

August 8, 2011*Mark A. Litman**Date*

TABLE OF CONTENTS

1. Real party in interest	page(s)	3
2. Related appeals and interferences	page(s)	4
3. Status of claims	page(s)	5
4. Status of amendments	page(s)	6
5. Summary of claimed subject matter	page(s)	7-8
6. Grounds of rejection to be reviewed on appeal	page(s)	9
7. Argument	page(s)	10-14
8. Claims appendix	page(s)	15-17
9. Evidence appendix	page(s)	18
10. Related proceedings appendix	page(s)	19

REAL PARTY IN INTEREST

The real party in interest in this Appeal is the assignee of the full right, title and interest in this Application, Stargames Corporation Pty, Ltd, having a place of business at 1 Sheridan Close Milperra, New South Wales, 2214 Australia.

RELATED APPEALS AND INTERFERENCES

The Appellant(s), the legal representative prosecuting this application and Appeal, and the assignee are not aware of any Appeals or Interferences that will directly affect or have a bearing on the Board's of Patent Appeals and Interferences decision in this pending Appeal.

STATUS OF CLAIMS

Claims 1-14 are On Appeal.

Claim 15 has been canceled.

STATUS OF AMENDMENTS

In the Amendment After Final Rejection, filed by Applicant on 11 April 2011, claim 15 was canceled. No other amendments to the claims were made.

SUMMARY OF CLAIMED SUBJECT MATTER

The Independent claims, 1, 7, 9 and 14 are mapped below:

1. A method of providing a jackpot in a gaming machine used to play a game, said machine having multiple simulated reels used in the game, and at least one pay line, including at least the steps of: [Page 2, lines 1-13] (a) determining a player's wager; (b) playing the game, so that the simulated reels assume a specific configuration showing symbols across said reels used in the game, [Page 2, lines 1-13] wherein one or more of said symbols can be a scatter symbol, [Page 2, lines 1-13] wherein one or more of said scatter symbols can be a variable state scatter symbol, [Page 2, lines 14-24] said variable state being either an active state, whereby said variable state scatter symbol acts as a scatter symbol, or an inactive state, whereby said variable state scatter symbol is not considered to be a scatter symbol, [Page 2, lines 14-24] wherein the probability of a variable state scatter symbol having an active state is dependent upon the size of the player's wager; [Page 2, lines 14-24] and (c) determining if scatter symbols appear across said reels used in the game in a predefined manner, and if so then paying said jackpot.

[Page 3, lines 1-4]

7. A method of awarding a jackpot in a simulated reels gaming machine, wherein dependent upon the configuration of reels used in the play of a game after game play, one or more reels used in the game may include active scatter symbols, [Page 2, lines 1-13] and one reel used in the game may include a set of symbols which selectively form active or inactive scatter symbols, [Page 2, lines 14-24] the jackpot being won by a predetermined combination of active scatter symbols in a game outcome display including one on the said one reel used in the game, [Page 2, lines 14-24] wherein the probability that a scatter symbol is selected as active on the game outcome display is dependent upon the size of the player's wager relative to a maximum possible wager for the machine. [Page 2, lines 14-24; and page 3, lines 1-4]

9. A gaming machine having multiple simulated reels, said machine including a processor, player wager selection means and a display, and at least one pay line, [Page 2, lines 1-13; page 3, lines 1-8] the processor playing a game in accordance with software, the game including the steps of: (a) receiving a player's wager from the wager selection means; (b) playing the game, so that the simulated reels used in the game are displayed, on said display, in a specific configuration showing symbols across said reels used in the game, [Page 2, lines 1-13] wherein one or more of said symbols can be a scatter symbol, wherein one or more of said scatter symbols can be a variable state scatter symbol, said variable state being either an active state, [Page 2, lines 1-24] whereby said variable state scatter symbol acts as a scatter symbol, or an inactive state, whereby said variable state scatter symbol is not considered to be a scatter symbol, [Page 2, lines 14-24] wherein the probability of a variable state scatter symbol having an active state is dependent upon the size of the player's wager; [Page 2, lines 14-24] and (c) determining if scatter symbols appear across said reels in a predefined manner, and if so then paying said jackpot. [Page 3, lines 1-8]

14. A gaming machine having multiple simulated reels used in a game, said machine including a processor, player wager selection means and a display, and at least one pay line in the reels used in the game, the processor playing a game in accordance with software, [Page 3, lines 5-21] wherein dependant upon the configuration of reels used in the game after game play, one or more reels used in the game may include active scatter symbols, and one reel may include a set of symbols which selectively form active or inactive scatter symbols, [Page 2, lines 1-24; Page 3, lines 5-21] the jackpot being won by a predetermined combination of active scatter symbols in a game outcome display including one on the said one reel used in the game, [Page 2, lines 1-24; Page 3, lines 5-21] wherein the probability that a scatter symbol is selected as active on the game outcome display is dependant upon the size of the player's wager relative to a maximum possible wager for the machine. [Page 2, lines 1-24; Page 3, lines 5-21]

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Solely for the purposes of expediting this Appeal and complying with the requirements of 37 C.F.R. 1.192(c)(7), the following grouping of claims is presented. This grouping is not intended to constitute any admission on the record that claims within groups may or may not be independently asserted in subsequent litigation or that for any judicial determination other than this Appeal, the claims may or may not stand by themselves against any challenge to their validity or enforceability.

The sole ground of rejection remaining in this Appeal after cancelation of claim 15 is:

- 1) Claims 1-15 (now only claims 1-14) have been rejected under 35 U.S.C. 103(a) as unpatentable over Published US Patent Document 2003/0236116 A1 (Marks) in view of Published Provisional US Patent Document 60/454,822, as shown by 2004/0180714 A1 (Ward).

ARGUMENT

- 1) Claims 1-15 (now effectively 1-14) have been rejected under 35 U.S.C. 103(a) as unpatentable over Published US Patent Document 2003/0236116 A1 (Marks) in view of Published Provisional US Patent Document 60/454,822, as shown by 2004/0180714 A1 (Ward).

In responding to this rejection, Applicants will follow the standards of evaluation of a rejection under 35 U.S.C. 103(a) and compare the language of the claims (in this case beginning with claim 1) with the teachings of the primary reference (Marks), determine the differences between Marks and the recited claim, and determine whether the teachings of the secondary reference (Ward) overcomes the deficiencies of Marks and can be combined with the teachings of Marks to show the obviousness of the invention as a whole, as claimed. This procedure will begin with the following table:

CLAIM 1	MARKS	COMMENTS
A method of providing a jackpot in a gaming machine, said machine having multiple simulated reels <u>used to play a game</u> , and at least one pay line,		
including at least the steps of: (a) determining a player's wager;	"...the player determines how many credits he wishes to wager on the next spin of the slot reels."	
(b) playing the game, so that the simulated reels <u>used in the game</u> assume a specific configuration showing symbols across said reels,	"Symbol Matrix. Slot symbols are displayed on 3 or more slot reels (also called "columns") placed adjacent to each other. Each column contains at least 3 rows, with a symbol in each row."	
wherein one or more of said symbols can be a scatter symbol,	[0009] Alternatively, players may also collect credits for predetermined winning combinations that appear anywhere on a pay line ("line scatter pays")	

wherein one or more of said scatter symbols can be a variable state scatter symbol,	The scatter symbols of Marks are always active scatter symbols.	Admitted to be absent from Marks
said variable state being either an active state, whereby said variable state scatter symbol acts as a scatter symbol,	The scatter symbols of Marks are always active scatter symbols.	Admitted to be absent from Marks
or an inactive state, whereby said variable state scatter symbol is not considered to be a scatter symbol,	The scatter symbols of Marks are always active scatter symbols.	Admitted to be absent from Marks
wherein the probability of a variable state scatter symbol having an active state is dependent upon the size of the player's wager;	A slot machine issues a percentage of one or more progressive awards based upon any wager level ("Percentage Progressive").	
and (c) determining if scatter symbols appear across said reels <u>used in the game</u> in a predefined manner, and if so then paying said jackpot	Wagers are resolved.	

The rejection asserts that paragraph [0061] of Ward discloses "...a game where the paylines can be active or inactive dependent upon the size of the wager..." The rejection asserts that it would be obvious to combine the concept of a "variable symbol/payline dependent on a wager amount as taught by Ward to the game and then add the common practice of scatter symbols (as shown by Marks et al.) to allow the player to increase the probability of winning by wagering a higher amount."

The failure in this rejection is the fact that even if traditionally dispersed scatter pays are added to the system of Ward as proposed by this rejection, that would not provide the subject matter as claimed. The subject matter as whole therefore cannot be obvious from a combination of the full breadth of technology enabled and suggested by these references.

The underlying fact is that neither Ward nor Marks teaches a VARIABLE STATE scatter symbol. There is no way the two references can be combined to

show the obviousness of a specific feature that is absent from each of the references. Ward teaches the following, which is approximately and appropriately quoted in the rejection:

“[0061] In accordance with the game, a winning event of the first or main game results if a predetermined combination of symbols 100 is displayed along an activated or active payline P. In one embodiment, paylines P are activated depending on the size of the wager or bet which is placed by a player. In one embodiment, all paylines P may be activated when a bet or wager is placed or payment or other entitlement to play the game exists. In another embodiment, only one or a few paylines P are activated when a bet or wager of a first size is placed (or points used), and additional or all paylines P are not activated unless an additional or larger bet or wager is placed (or point used). In a preferred embodiment, a base bet or wager activates a single payline P, such as payline P1. An additional incremental bet or wager is required to activate each additional payline P2-P8. A maximum bet of eight times the base bet or wager thus activates all of the paylines P1-8. In one embodiment, a base bet or wager may comprise a single coin or denomination (such as U.S. \$0.25) or multiple coins (e.g. U.S. \$1.00, which is 4.times.\$0.25).”
(emphasis added)

However, the rejection attempts to take the relatively standard method of play of requiring a player to pay for additional paylines and attempts to extend that teaching by equating the “variable state scatter symbols” of the claims of Applicant and paylines from the teachings of Ward to “symbols/paylines” in the rejection. There is no legal way of equating activation of a specific class of symbols as recited in the claims On Appeal of Applicant to the activation of an entire payline as taught by Ward. This feature is emphasized by the recitation in the claims On Appeal that the reels are already in play, and that the variable state scatter pays would have to be separately activated (variable state) as by the wager. The scatter pays of Marks are always active. This rejection is clear error and it will be shown both that the cited teaching of Ward fails to disclose the subject matter for which it is cited, and that the addition of Ward cannot overcome the deficiencies of marks with respect to the subject matter as a whole as claimed.

Claim 1 specifically recites steps of:

“... (a) determining a player's wager; (b) playing the game, so that the simulated reels used in the game assume a specific configuration showing symbols across said reels, wherein one or more of said symbols

can be a scatter symbol, wherein one or more of said scatter symbols can be a variable state scatter symbol, said variable state being either an active state, whereby said variable state scatter symbol acts as a scatter symbol, or an inactive state, whereby said variable state scatter symbol is not considered to be a scatter symbol, wherein the probability of a variable state scatter symbol having an active state is dependent upon the size of the player's wager;..."

Note that Appellant's claim language On Appeal shows that not only scatter symbols are provided in reels that are used in the game, but that the scatter pay symbols are already in reels used in the game (whether dependent on the size of the wager or not), but that the scatter pays, already in reels used in the game are active or inactive dependent upon the size of the wager. This is totally different from the teaching of Ward, wherein the reels or paylines are active or inactive (not individual symbols) dependent upon the size of the wager. Under the present description of the steps recited in the claims, the reels in the gaming machine are already used in the game (the reels are already active), the symbols including scatter symbols are also provided in the reels used in the game (i.e., the reels are already active in the game), and the probability that individual scatter pay symbols that are already on the reels are active or inactive varies with the size of the wager.

That mode of play recited in all independent claims (using various alternative language in claims 1, 7, 9 and 14) is novel and unobvious over the method described by Marks in view of Ward. As the method disclosed by Ward cannot render obvious the steps recited in these claims that are also **admitted to not be taught by Marks**, the combination of two references that individually fail to render obvious this specific step cannot be combined to make that step (and all the claims on Appeal) obvious. The present claims recite that the activity of symbols provided in reels already used in the game have their activity altered. Ward teaches that the size of a wager will determine how many reels or paylines are used in the game.

The rejection is clearly in error and must be withdrawn.

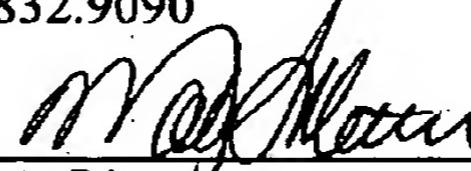
CONCLUSION

All rejections of record have been shown in detail to be in error. The rejection should be reversed and all claims should be indicated as allowable.

Applicants believe the claims are in condition for allowance and request reconsideration of the application and allowance of the claims. The Examiner is invited to telephone the below-signed attorney at 952-832-9090 to discuss any questions that may remain with respect to the present application.

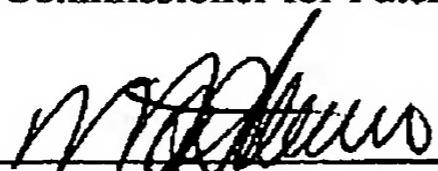
Respectfully submitted,
Terry O'Halloran, et al.
By their Representatives,
MARK A. LITMAN & ASSOCIATES, P.A.
York Business Center, Suite 205
3209 West 76th Street
Edina, MN 55435
(952)832.9090

Date 8 AUGUST 2011 By



Mark A. Litman
Reg. No. 26,390

I hereby certify that this paper is being transmitted by facsimile to the United States Patent and Trademark Office on the date shown below. These papers are addressed to MAIL STOP: APPEAL BRIEF - PATENTS, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313, on the date indicated below:



Mark A. Litman

August 8, 2011

Date

CLAIMS APPENDIX

1. (ON APPEAL) A method of providing a jackpot in a gaming machine used to play a game, said machine having multiple simulated reels used in the game, and at least one pay line, including at least the steps of: (a) determining a player's wager; (b) playing the game, so that the simulated reels assume a specific configuration showing symbols across said reels used in the game, wherein one or more of said symbols can be a scatter symbol, wherein one or more of said scatter symbols can be a variable state scatter symbol, said variable state being either an active state, whereby said variable state scatter symbol acts as a scatter symbol, or an inactive state, whereby said variable state scatter symbol is not considered to be a scatter symbol, wherein the probability of a variable state scatter symbol having an active state is dependent upon the size of the player's wager; and (c) determining if scatter symbols appear across said reels used in the game in a predefined manner, and if so then paying said jackpot.
2. (ON APPEAL) A method according to claim 1, wherein the probability of winning the jackpot based upon the scatter symbols is linearly dependant upon the size of the player's wager relative to a maximum possible wager.
3. (ON APPEAL) A method according to claim 1, wherein the inactive variable state scatter symbol is operative for non-jackpot game play.
4. (ON APPEAL) A method of claim 1, wherein the probability of a variable state scatter symbol having an active state is dependant upon the size of the player's wager relative to a maximum possible wager.
5. (ON APPEAL) A method according to claim 1, wherein the jackpot is accumulated across a plurality of linked machines.
6. (ON APPEAL) A method according to claim 1, wherein the jackpot is accumulated on a single machine.

7. (ON APPEAL) A method of awarding a jackpot in a simulated reels gaming machine, wherein dependent upon the configuration of reels used in the play of a game after game play, one or more reels used in the game may include active scatter symbols, and one reel used in the game may include a set of symbols which selectively form active or inactive scatter symbols, the jackpot being won by a predetermined combination of active scatter symbols in a game outcome display including one on the said one reel used in the game, wherein the probability that a scatter symbol is selected as active on the game outcome display is dependent upon the size of the player's wager relative to a maximum possible wager for the machine.
8. (ON APPEAL) A system for operating a linked jackpot, comprising at least a plurality of gaming machines linked to a central jackpot controller, said central jackpot controller and said machines cooperating to implement the method according to claim 1.
9. (ON APPEAL) A gaming machine having multiple simulated reels, said machine including a processor, player wager selection means and a display, and at least one pay line, the processor playing a game in accordance with software, the game including the steps of: (a) receiving a player's wager from the wager selection means; (b) playing the game, so that the simulated reels used in the game are displayed, on said display, in a specific configuration showing symbols across said reels used in the game, wherein one or more of said symbols can be a scatter symbol, wherein one or more of said scatter symbols can be a variable state scatter symbol, said variable state being either an active state, whereby said variable state scatter symbol acts as a scatter symbol, or an inactive state, whereby said variable state scatter symbol is not considered to be a scatter symbol, wherein the probability of a variable state scatter symbol having an active state is dependent upon the size of the player's wager; and (c) determining if scatter symbols appear across said reels in a predefined manner, and if so then paying said jackpot.
10. (ON APPEAL) A gaming machine according to claim 9, wherein the probability of winning the jackpot based upon the scatter symbols is linearly dependant upon the size of

the player's wager relative to a maximum possible wager.

11. (ON APPEAL) A gaming machine according to claim 9, wherein the inactive variable state scatter symbol is operative for non-jackpot game play.

12. (ON APPEAL) A gaming machine according to claim 9, wherein the probability of a variable state scatter symbol having an active state is dependant upon the size of the player's wager relative to a maximum possible wager.

13. (ON APPEAL) A system for operating a linked jackpot game, comprising at least a plurality of gaming machines according to claim 9, said gaming machines being linked to a central jackpot controller, said central jackpot controller and said machines cooperating to provide a pooled jackpot incremented from wagers on all of said gaming machines.

14. (ON APPEAL) A gaming machine having multiple simulated reels used in a game, said machine including a processor, player wager selection means and a display, and at least one pay line in the reels used in the game, the processor playing a game in accordance with software, wherein dependant upon the configuration of reels used in the game after game play, one or more reels used in the game may include active scatter symbols, and one reel may include a set of symbols which selectively form active or inactive scatter symbols, the jackpot being won by a predetermined combination of active scatter symbols in a game outcome display including one on the said one reel used in the game, wherein the probability that a scatter symbol is selected as active on the game outcome display is dependant upon the size of the player's wager relative to a maximum possible wager for the machine.

15. (CANCELED)

EVIDENCE APPENDIX

Neither Appellants nor their counsel in this Appeal are aware of any secondary or supplemental evidence submitted during the prosecution of this Application that must be considered by the Board of patent Appeals in this decision.

RELATED PROCEEDINGS APPENDIX

Neither Appellants nor their counsel on this Appeal are aware of any proceedings before the US Patent and Trademark Office or any US Judicial or Quasi-Judicial authority that relates directly towards any issues in this Appeal.